

REMARKS

Claims 1, 3-12, 40-42 and 45-54 are presently pending; claims 51-54 are new and depend from claim 1.

The Examiner's indication that claims 46-50 are allowable is noted with appreciation.

Claim 1 was provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of Application No. 10/763,534. This provisional rejection will be addressed should claim 1 be allowed.

Claims 1 and 3-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,846,052 to Favre et al. in view of U.S. Patent No. 4,925,683 to Fischbach et al. It is respectfully submitted that claims 1 and 3-12, as presently recited, are not unpatentable over Favre in view of Fischbach.

Favre does not disclose a cartridge having an inlet and an outlet fixed relative to the inlet, as well as an air inlet. Instead, Favre discloses an extraction device 1 having an injection element 6 with bore holes 7. A cartridge 16 is placed in a separate cartridge holder 15 and moved toward the injection element 6 of the extraction device 1 to pierce the cartridge 16. Fluid exists the cartridge 16 when the cover 19 splits along a weakening line. The exiting fluid then flows into a space between the cartridge 16 and the cartridge holder 15. From this space, fluid exits through the passage 22. The passage 22 of the cartridge holder 15 and the injection element 6 of the extraction device are not fixed relative to each other. Just the opposite, they are formed in two separate components that must be moved toward each other in order to pierce the cartridge 16

Fischbach also does not disclose a cartridge an inlet, and outlet and an air inlet. Instead, Fischbach discloses an envelope with neither an inlet nor an outlet, but rather the envelope is dissolvable.

Given than neither Favre nor Fischback disclose a cartridge having an inlet and an outlet fixed relative to the inlet, as well as an air inlet, their proposed combination suggested in the Office action also will lack the same.

Application No. 10/763,680
Amendment dated July 18, 2008
Reply to the Office action of Jan. 18, 2008

Claims 40-42 and 45 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,471,689 to Piana in view of Fischbach. It is respectfully submitted that claims 40-42 and 45, as presently recited, are not unpatentable over Piana in view of Fischbach.

Piana does not disclose an outer member and an inner member contained entirely within the outer member, as presently recited in claim 40. Instead, Piana discloses a two part cartridge with a cup part 12 having an opening covered by a lid part 14. The lid part 14 is not disposed entirely within the cup part 12, as illustrated in Fig. 2, and thus is not contained within the outer member. Fischbach also does not disclose the claimed outer member and inner member, but rather an envelope.

In view of the foregoing comments, it is respectfully submitted that claims 1, 3-12, 40-42 and 45 are allowable, and reconsideration and allowance are respectfully requested. Claims 51-54 are also submitted to be patentable.

The Commissioner is hereby authorized to charge any additional fees which may be required in this application to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

Date: July 18, 2008

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